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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/551,573	10/03/2005	Atsushi Nakamura	OKUDP0135US	4401
51921 7590 07/28/2008 MARK D. SARALINO (MEI) RENNER, OTTO, BOISSELLE & SKLAR, LLP 1621 EUCLID AVENUE 19TH FLOOR CLEVELAND, OH 44115				
EXAMINER BATTAGLIA, MICHAEL V				
ART UNIT 2627		PAPER NUMBER		
MAIL DATE 07/28/2008		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

***Response to Amendment***

1. Amended claims 1, 10, 18 and 19 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Amended claims 1, 10, 18 and 19 are directed towards to the species of data recording method and apparatus in which recording marks having a length of  $nT_w$  and  $(n+1)T_w$  are recorded with a write pulse waveform having only one write pulse and recording marks having a length  $(n+2)T_w$  or more are recorded with a write pulse waveform having multiple write pulses (see Figs. 11 and 12). In contrast, the originally filed claims were directed towards to the species of data recording method and apparatus in which recording marks having a length of  $nT_w$ ,  $(n+1)T_w$  and  $(n+2)T_w$  are recorded with a write pulse waveform having only one write pulse and recording marks having a length  $(n+3)T_w$  or more are recorded with a write pulse waveform having multiple write pulses (see Figs. 4 and 6-9).

The species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species. In addition, these species are not obvious variants of each other based on the current record.<sup>1</sup> Further, there is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics. The species require a different field of search (e.g., searching different classes/subclasses or electronic resources, or employing different search queries); and/or the prior art applicable to one

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<sup>1</sup> Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the species unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other species.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141.

species would not likely be applicable to another species; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. The amendment filed on May 27, 2008 is non-responsive because it presents only claims drawn to the non-elected invention and not readable on the constructively elected invention (MPEP § 821.03 and see 37 CFR 1.142(b)).

Since the above-mentioned amendment appears to be a *bona fide* attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

### ***Conclusion***

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael V. Battaglia whose telephone number is (571)272-7568. The examiner can normally be reached on M-F, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, A. Wellington can be reached on (571) 272-4483. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael V. Battaglia/  
Patent Examiner, Art Unit 2627